

FIRST AMENDMENT TO
AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID
WASTE MANAGEMENT SERVICES

THIS FIRST AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES ("Amendment") is dated as of 19th Dec, 2012, for reference purposes only, and is entered into by and between the CITY OF SANTEE, a California municipal corporation (the "City") and USA WASTE OF CALIFORNIA, INC., a Delaware corporation, a Waste Management company, (the "Contractor"), with reference to the following recited facts (each a "Recital"):

RECITALS

A. Through the enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code section 40000 *et seq.*) ("AB 939"), the Legislature of the State of California has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste management services within their jurisdictions to meet the goals and requirements of AB 939.

B. Contractor is currently providing exclusive Solid Waste management services within the City pursuant to the 2008 Amended and Restated Franchise Agreement for Solid Waste Management Services ("Agreement"), which will expire on December 31, 2012.

C. In connection with the negotiation and execution of a new franchise agreement that will commence on January 1, 2013, City and Contractor wish to make certain amendments to the existing Agreement, to take effect retroactively on July 1, 2012 notwithstanding the dates of approval and execution of this Amendment.

NOW, THEREFORE, IN CONSIDERATION OF THE RESPECTIVE COVENANTS AND PROMISES CONTAINED IN THIS AMENDMENT, AND FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. Section 3.2 of the Agreement is hereby amended to read as follows:

3.2 Contract Service Fee. In addition to the Franchise Fee, for Agreement year 2012, Contractor shall pay to the City an annual Contract Service Fee in the amount of Two Hundred Fifty Thousand Dollars (\$250,000). Contractor has paid \$76,492 of the 2012 Contract Service Fee. The third and fourth quarter payments shall be added together for a total of \$173,508 and paid to the City within 20 days after the end of the fourth quarter but no later than January 20, 2013.

2. Section 3.4 is hereby added to the Agreement to read as follows:

3.4 Landfill Disposal Credit. Concurrently with each Franchise Fee payment, Contractor shall tender payment to City representing the value of the landfill disposal credit granted to City pursuant to the "Landfill Settlement Agreement" dated September 14, 2011 to which City, San

Diego Landfill System, LLC, Allied Waste Industries, Inc, and Republic Services, Inc are parties. Contractor shall provide documentation of the calculation of the credit payment. Notwithstanding the foregoing and the Effective Date of this Agreement, and in lieu of quarterly payments for 2012, Contractor shall, within 30 days of the date of this Amendment, tender payment to the City in an amount equal to the cost of disposing of 1,000 tons of solid waste at the Sycamore Creek Landfill, representing the value of the disposal credit for calendar year 2012.

3. Section 3.5 is hereby added to the Agreement to read as follows:

3.5 Recycling Initiative Fee. In order to offset the financial impact to City of reductions in landfill host fee revenue caused by successful efforts to recycle and otherwise divert waste from landfills, Contractor shall pay to City Five Dollars (\$5) for each ton of Recyclables collected by Contractor in 2012 in excess of the aggregate Recyclables tonnage collected in 2011. Said payment shall be made on or before January 31, 2013, along with supporting documentation.

City and Contractor have signed this First Amendment to Amended and Restated Exclusive Franchise Agreement for Solid Waste Management Services as of this 19 day of Dec, 2012.

City:

CITY OF SANTEE, a California municipal corporation

By: Keith Till
Keith Till
City Manager

Contractor:

USA WASTE OF CALIFORNIA, INC., a Delaware corporation

By: Sanjay Patel
Title: President - Southern California Area

ATTEST:

By: Patsy Bell
City Clerk

APPROVED AS TO FORM:

By: M. A.
City Attorney

EXCLUSIVE FRANCHISE AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES

THIS EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID WASTE MANAGEMENT SERVICES ("Agreement") is dated as of Dec. 19, 2012, for reference purposes only, and is entered into by and between the City of Santee, a California municipal corporation and charter city (the "City") and USA Waste of California, Inc., a Delaware corporation, a Waste Management Company, (the "Contractor"), with reference to the following recited facts (each a "Recital"):

RECITALS

A. Through the enactment of the California Integrated Waste Management Act of 1989 (California Public Resources Code section 40000 *et seq.*) ("AB 939"), the Legislature of the State of California has declared that it is in the public interest to authorize and require local agencies to make adequate provisions for Solid Waste Management Services within their jurisdictions to meet the goals and requirements of AB 939.

B. Pursuant to California Public Resources Code section 40059(a)(2), the City has determined that, in order to protect the health, safety and welfare of the residents and businesses within the City of Santee, it is appropriate to provide for Solid Waste Management Services by a private hauler as an alternative to providing such services through public resources, and that an exclusive franchise with a qualified company is the best means to provide for the handling of Solid Waste and Recyclables and other services to meet the goals and requirements of AB 939.

C. Pursuant to California Public Resources Code section 40059, the City may impose terms and conditions on the award of a Solid Waste franchise if, in the opinion of the City's governing body, the public health, safety and welfare require the imposition of those terms and conditions.

D. Contractor has represented and warranted to the City that it has the experience, responsibility and qualifications to provide Solid Waste Management Services as stated in this Agreement.

E. The City Council of the City has determined that Contractor, by demonstrated experience, reputation and capacity, is qualified to continue to exclusively provide for the collection of Solid Waste within the corporate limits of the City and to transport such Solid Waste to places of processing and disposal, which may be designated in accordance with this Agreement, and City and Contractor desire that Contractor be engaged to perform such services on the terms and conditions set forth in this Agreement.

F. Contractor, or its predecessor in interest, has provided exclusive Solid Waste Management Services within the City continuously since 1996 pursuant to a franchise agreement and its various amendments. To accurately reflect the rights and obligations of the City and Contractor, on the Effective Date, this Agreement will amend, restate and supersede all prior

agreements and understandings of the City and Contractor regarding Solid Waste Management Services within the City of Santee.

G. The City Council of the City has determined that the public health, safety and welfare require that Solid Waste Management Services, including, but not limited to, the frequency of collection, the means of collection and the transportation, scope of services, charges and fees, location and extent of such service be governed by and provided under the terms of this Agreement.

H. The Parties desire to enter into this Agreement to set forth their rights and obligations related to Solid Waste Management Services within the City of Santee.

NOW, THEREFORE, IN CONSIDERATION OF THE RESPECTIVE COVENANTS AND PROMISES CONTAINED IN THIS AGREEMENT, AND FOR GOOD AND VALUABLE CONSIDERATION, THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS.

1.1 Affiliated Companies. All businesses which are directly or indirectly related to Contractor by virtue of direct or indirect ownership interests or common management or a business which is also owned, controlled or managed by any business or individual which has a direct or indirect ownership interest in Contractor.

1.2 Agreement. This Exclusive Franchise Agreement for Solid Waste Management Services.

1.3 Applicable Law. All laws, statutes, rules, regulations, guidelines, permits, actions, determinations, orders or requirements of the United States, the State of California, the County of San Diego, City, regional or government authorities, agencies, boards, commissions, courts or other bodies having applicable jurisdiction, that from time to time apply to or govern the services provided pursuant to this Agreement or the performance of the Parties' respective obligations hereunder, including, but not limited to, any of the foregoing which concern health, safety, fire, environmental protection, labor relations, mitigation, monitoring, building codes, zoning and non-discrimination. All references herein to Applicable Law include subsequent amendments thereto, unless otherwise limited.

1.4 Automated Service. The collection of Solid Waste, Recyclables and/or Yard Waste utilizing Carts that eliminate the need for any manual handling of containers by the collector.

1.5 Bins. Containers, including Commercial Solid Waste Containers and Single-Family Residential Solid Waste Containers having a one and one-half (1 ½) to six (6) cubic yard capacity.

1.6 Biohazardous or Biomedical Wastes. Any waste as defined by Section 8.38.010 (B) of the Santee Municipal Code. Biohazardous or Biomedical Wastes include, but are not limited to, wastes which may cause disease or reasonably be suspected of harboring pathogenic organisms, including, but not limited to, waste resulting from the operation of medical clinics,

hospitals and other facilities producing wastes that may consists of, but are not limited to, diseased human and animal parts, contaminated bandages, pathological specimens, Sharps, contaminated clothing and surgical gloves.

1.7 Bulky Items. Discarded furniture (including chairs, sofas, mattresses, and rugs), and appliances (including refrigerators, ranges, washers, dryers, water heaters, dishwashers, small household appliances, and other similar items, commonly known as “white goods”), stereos, televisions, computers, VCRs, and other items comprising E-Waste as defined herein. Bulky Items do not include demolition and construction wastes, Universal Waste other than E-Waste, or any item such as car bodies, Jacuzzi tubs or spas, or any other item (whether or not specifically identified herein) that cannot reasonably be handled. In addition, Bulky Items do not include waste tires.

1.8 Buy-back/Drop-off Center. A facility that accepts Recyclables, E-Waste and Universal Waste from Residential Householders and Recyclables from Commercial Business Occupants located within the City for the purpose of recycling, recovery or other proper disposition, at no charge.

1.9 Cart. A plastic container with a capacity of no less than 34 and no greater than 96 gallons, having a hinged lid and wheels, collected using Automated Service.

1.10 City. The City of Santee, California.

1.11 City Council. The City Council of the City of Santee, California.

1.12 City Manager. The City Manager of City or designee. Unless otherwise provided in this Agreement, the City Manager or designee is the authorized agent of City for enforcement of this Agreement.

1.13 Collect or Collection. The operation of gathering together and/or transporting by means of a motor vehicle or other means, any Solid Waste, Recyclables or Yard Waste.

1.14 Commercial Business Occupant. Any person, firm, corporation or other enterprise or organization holding or occupying, singly or with others, Commercial Premises, whether or not the holder of the title of the commercial premises.

1.15 Commercial Premises. All occupied real property in the City except property occupied by governmental agencies which do not consent to their inclusion, and except residential premises which receive Solid Waste collection services using Single Family Residential Solid Waste Containers, and shall include without limitation, Multi-Family Residential Premises, wholesale or retail establishments, restaurants, other food establishments, bars, stores, shops, offices, manufacturing, repair, research and development, professional services, sports or recreational facilities, and construction and demolition sites, factories, refineries, and other industrial facilities.

1.16 Commercial Solid Waste Container. A Bin or Roll-off Box.

1.17 Container. Any vessel, tank, receptacle, box or Bin used or intended to be used for the purpose of holding Solid Waste, Yard Waste, or Recyclables for storage or collection.

1.18 Contract Service Fee. The fee described in paragraph 3.2 of this Agreement.

1.19 Contractor. USA Waste of California, Inc., the entity granted the Franchise pursuant to this Agreement.

1.20 Curbside. The collection of Solid Waste, Recyclables or Yard Waste at the curb or alleyway.

1.21 Customer. Any Residential Householder or Commercial Business Occupant receiving services from Contractor for services pursuant to this Agreement.

1.22 Director. The Director of Community Services of the City of Santee or designee.

1.23 Effective Date. January 1, 2013.

1.24 E-Waste. Appliances, devices and other objects containing electronic components, including, but not limited to, computers, computer monitors, cellular telephones, copiers, fax machines, DVD players, VCR's and televisions.

1.25 Franchise. The right to provide exclusive Solid Waste Management Services within the City, granted by the City Council pursuant to this Agreement.

1.26 Franchise Fee. The fee provided in paragraph 3.1 of this Agreement.

1.27 Gross Revenue. All monetary amounts actually received by Contractor for the collection of Solid Waste, Recyclables and Yard Waste pursuant to this Agreement. The term Gross Revenue, for purposes of this Agreement, shall not include revenues generated from the sale of Recyclables (including Department of Conservation rebates) and other rebates or grants from state and local government accounts. Unless otherwise expressly excluded, Gross Revenue includes all monetary amounts actually received by Contractor for providing the services authorized by this Agreement.

1.28 Hazardous Waste. Waste defined as hazardous by Health and Safety Code Section 25117, including: (1) a waste or combination of wastes which, because of its quantity, concentration, or physical, chemical or infectious characteristics, may either (a) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness, or (b) pose a substantial present or potential hazard to human health or environment when improperly treated, stored, transported or disposed of, or otherwise managed; (2) a waste which meets any of the criteria for the identification of a hazardous waste adopted by the California Environmental Protection Agency's Division of Toxic Substances Control pursuant to Health and Safety Code Section 25141. Hazardous waste includes extremely and acutely hazardous waste, unless expressly provided otherwise.

1.29 HHWE. The Household Hazardous Waste Element for the City prepared and updated pursuant to the Public Resources Code.

1.30 Holiday. New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and any other day designated as such in a contract between Contractor and the labor union serving as the exclusive representative of Contractor's employees, provided such holiday is approved by the City Council.

1.31 Host Fees. Charges levied on Solid Waste disposed or processed within a jurisdiction by the jurisdiction in which a Solid Waste facility is located. The fees are separate from the disposal and processing costs charged by the receiving facility itself.

1.32 Household Hazardous Waste. Household Hazardous Waste shall have the meaning set forth in Title 14, California Code of Regulations, Section 18502 or successor laws and regulations as may be amended from time to time.

1.33 Landfill. A disposal facility that accepts Solid Waste for land disposal as defined in Section 40195.1 of the Public Resources Code.

1.34 Multi-Family Residential Premises. A structure or structures containing greater than four dwelling units in any vertical or horizontal arrangement on a single lot or building site.

1.35 Municipal Code. The Municipal Code of the City and any amendments thereto.

1.36 Parties. The City and Contractor, collectively.

1.37 Party. The City or Contractor, individually.

1.38 Permittee. A person who holds a valid, unrevoked, and unexpired permit to collect or transport Solid Waste, Yard Waste and/or Recyclables issued pursuant to this chapter.

1.39 Person. Any individual, firm, association, co-partnership, political subdivision, government agency, municipality, public or private corporation, or any other entity.

1.40 Public Agency. Any governmental agency or department thereof.

1.41 Public Education. Any and all efforts to enhance, increase or improve the knowledge of customers of Contractor or residents of the City regarding Solid Waste, recycling, source reduction or any other aspect of Solid Waste Management Services.

1.42 Public Resources Code. The state of California Public Resources Code and in particular Sections 40000 et seq.

1.43 Recyclables. Materials generated on or emanating from Residential or Commercial Premises, no longer useful or wanted thereon, and which are separated from the Solid Waste stream, either by the generator or by Contractor, for the purpose of recycling into other useable product(s).

1.44 Recycling. The process of collecting, sorting, cleansing, treating, and reconstituting materials that would otherwise become refuse, and returning them to the economic mainstream in the form of raw material for new, reused, or reconstituted products which meet the

quality standards necessary to be used in the marketplace. Recycling does not include transformation as defined in Public Resources Code Section 40201.

1.45 Residential Householder. Any person holding and/or occupying a residential premises, whether or not the owner, singly or with his or her family, in the City.

1.46 Residential Premises. Any residential property within the City receiving Solid Waste collection services using Single-family Residential Solid Waste Containers utilizing Solid Waste containers of ninety-six gallons or less capacity for the provision of Waste Management Services.

1.47 Roll-Off Box. An open-top metal container or closed compactor box with a capacity of ten (10) to forty (40) cubic yards that is serviced by a roll-off truck.

1.48 Self-hauling. The act of a Residential Householder or Commercial Business Occupant collecting and legally disposing of Solid Waste, Recyclables, or Yard Waste generated in or on their premises pursuant to Section 2.5 of this Agreement.

1.49 Sharps. Medical devices that have needles or other sharp implements as component parts, including, but not limited to sharps and sharps used in animal or human patient care, medical research, or clinical or pharmaceutical laboratories, hypodermic, intravenous syringes to which a needle or other sharp is still attached, Pasteur pipettes, scalpel blades, blood vials, other types of broken or unbroken glass (including slides and cover slips) that have been in contact with infectious agents. "Sharps" shall not include those parts of syringes from which sharps are specifically designed to be easily removed and from which sharps have actually been removed, and which are intended for recycling or other disposal, so long as such syringes have not come in contact with infectious agents.

1.50 Single-family Residential Solid Waste Container. A container made of metal, hard rubber or plastic not exceeding ninety-six gallons in capacity.

1.51 Solid Waste. All putrescible and nonputrescible solid and semisolid wastes, generated in or upon, related to the occupancy of, remaining in or emanating from residential premises or commercial premises, including garbage, rubbish, trash, refuse, ashes, industrial wastes, demolition and construction wastes, manure, vegetable or animal solid or semisolid wastes, and other solid and semisolid wastes. This excludes Recyclables, source-separated Yard Waste, liquid wastes, abandoned vehicles, and Hazardous, Biohazardous and Biomedical Wastes, Sharps, or any item excluded from the definition of Bulky Items.

1.52 Solid Waste Management Services. The collection, transportation, storage, transfer, disposal, or processing of Solid Waste, Recyclables or Yard Waste from Residential Premises and Commercial Premises located in the City.

1.53 SRRE. The Source Reduction and Recycling Element for the City prepared and updated pursuant to the Public Resources Code.

1.54 State. The State of California.

1.55 Term. Shall have the meaning set forth in paragraphs 4.1 and 4.2 of this Agreement.

1.56 Transfer or Processing Station. As defined in Public Resources Code Section 40200, this means those facilities utilized to receive Solid Wastes, temporarily store, separate, convert, or otherwise process the materials in the Solid Wastes, or to transfer the Solid Wastes directly from smaller to larger vehicles for transport, and those facilities used for transformation.

1.57 Universal Waste. Any waste matter which the State of California classifies as "Universal Waste," including, but not limited to, items and materials listed in 22 CCR 66261.9, as it may be amended, as well as the following: e-waste (as defined herein), batteries (other than automobile batteries), thermostats, lamps with fluorescent tubes, high intensity discharge lamps, sodium vapor lamps, and other lamps with hazardous waste characteristics, cathode ray tubes, aerosol cans, mercury-containing items, prescription and non-prescription drugs, not including controlled substances.

1.58 Yard Waste. Leaves, grass, weeds, and wood materials from trees and shrubs, and similar materials generated at any premises that fit within a Cart. Yard waste does not include palm fronds, or tree trunks or limbs more than two (2) feet in diameter.

2. GRANT OF FRANCHISE

2.1 Grant of Franchise. The City grants to Contractor during the Term the exclusive right and Franchise to provide Solid Waste Management Services in the City in accordance with the terms of this Agreement and Chapter 13.36 of the Santee Municipal Code.

2.2 Exclusive. City agrees not to award any contract to, or enter into any contract with, any person other than the Contractor for the provision of residential, commercial and industrial Solid Waste Management Services including Recycling except, in the event Contractor fails, refuses or neglects for any reason to perform said Solid Waste Management Services as herein provided at the time and in the manner herein required, City may perform said Solid Waste Management Services or cause said services to be performed, and Contractor shall be liable for any reasonable expenses incurred therefor.

2.3 Buy-Back/Drop-Off Centers. City agrees not to award a contract to, or enter into any contract with any other person, firm or organization to operate a Recyclables buy-back/drop-off center in the City except, in the event Contractor fails, refuses or neglects for any reason, to operate a buy-back/drop-off center, City may assign the right to operate a Recyclables buy-back/drop-off center to another entity. Excluded from the rights granted in this paragraph are: (i) buy-back/drop-off centers which operate strictly for the purpose of compliance with the California Beverage Container Recycling and Litter Reduction Act, Public Resources Code section 14500 et seq.; and (ii) buy-back/drop-off centers with which City's only involvement is acting in its governmental and regulatory capacity, such as through issuance of a permit to operate.

2.4 Incorporation of Chapter 13.36 of the Santee Municipal Code. Except as modified by a more restrictive provision of this Agreement, the City's grant of this exclusive Franchise to Contractor pursuant to this Agreement incorporates all terms and conditions of

Chapter 13.36 of the Santee Municipal Code, as it currently exists or as may be amended from time to time. Contractor acknowledges and agrees that the provisions of Chapter 13.36 of the Santee Municipal Code establish the minimum standards to be observed by Contractor, and that those minimum standards may be modified by any higher standards and stricter regulations set forth in this Agreement.

2.5 Exclusions from the Franchise The Franchise granted by this Agreement does not include:

2.5.1 **Gardeners.** Gardeners, tree trimmers, roofers, carpenters, masons or similar contract enterprises who haul or dispose of grass clippings, prunings, wood or other materials collected in the course of their business using their own equipment; and

2.5.2 **Commercial and Industrial.** Commercial and industrial generators of refuse, Recyclables or Yard Waste who haul, sell or otherwise dispose of material generated on their own property during the course of their normal business using their own equipment and employees; and

2.5.3 **Residential Self-Haul.** Residents who elect not to subscribe to refuse, Recycling and Yard Waste collection services. Such residents must, upon request, show evidence of weekly refuse disposal, along with recycling and yard waste disposition to the City and the Contractor who shall have the authority to confirm an exception from curbside collection.

2.5.4 **Sale or Donation of Recyclables.** The sale or donation of Recyclables by the persons or businesses generating such Recyclables. Recyclables that are donated by the generator, and/or Recyclables that the generator sells to, or otherwise receives compensation for from, other persons in a manner resulting in a net payment to the generator after consideration of collection, handling, processing costs and other costs.

2.6 Responsibility to Enforce. It shall be the Contractor's responsibility to enforce this Franchise, except as to violations of the Municipal Code. Contractor may require Residential and Commercial Premises utilizing one of the franchise exclusions above to provide Contractor with information sufficient to verify compliance with the claimed exception. The City will provide reasonable support to Contractor in these efforts, including enforcement of applicable municipal code provisions.

3. **FRANCHISE FEE AND OTHER CONSIDERATION**

3.1 Franchise Fee, Report and Late Payments. In consideration of the exclusive Franchise provided by this Agreement, Contractor shall pay to the City a Franchise Fee equal to 15% of the Gross Revenue derived by Contractor under this Agreement. Contractor shall pay the Franchise Fee to the City not later than twenty (20) calendar days after the end of each quarter of Contractor's fiscal year. This obligation shall remain in effect for the final quarter during the Term, notwithstanding that the payment will be due following the expiration of this Agreement. Contractor shall, along with the payment of the Franchise Fee, provide the City with a report setting forth the Gross Revenues and calculation of the Franchise Fee. Contractor agrees to allow the City to increase or decrease this Franchise Fee to any amount, if, in the sole discretion

of the City, it is necessary to defray the City's waste management costs; such increases will result in a rate adjustment pursuant to Section 8.3.3. Late payment of the Franchise Fee, will be subject to a charge assessed by the City as an amount equal to ten percent (10%) of the amount owed plus twelve percent (12%) interest per annum prorated to each day of delinquency. The late payment shall be documented and processed by the City's Finance Director and shall be due immediately upon notice to Contractor.

3.2 Contract Service Fee. In addition to the Franchise Fee, Contractor shall pay to the City an annual Contract Service Fee in the amount of the greater of: (i) Two Hundred Fifty Thousand Dollars (\$250,000); or (ii) 3.8% of the Gross Revenue derived by Contractor under this Agreement. The Contract Service Fee shall be due and payable to the City in four quarterly installments, not later than twenty (20) calendar days after the end of each quarter of Contractor's fiscal year. Each installment shall be in the amount of the greater of Sixty-Two Thousand Five Hundred Dollars (\$62,500) or 3.8% of the Gross Revenue derived by Contractor under this Agreement during the preceding quarter. The Contract Service Fee Payment will be adjusted pro rata for any quarter in which Contractor is providing services under this Agreement for only part of the quarter. Commencing on January 1, 2014, and thereafter on January 1 of each succeeding year, the possible flat-rate Contract Service Fee shall be increased by the greater of: (i) the change in the Consumer Price Index for San Diego County, California, for all urban consumers, multiplied by .70; or (ii) three percent (3%). This obligation shall remain in effect for the final quarter of this Agreement, notwithstanding that the payment will be due following the expiration of this Agreement.

3.3 Reimbursement of City's Costs for Franchise Agreement. In addition to the Franchise Fee and the Contract Service Fee, Contractor shall reimburse the City for its reasonable costs, including attorney's fees, for evaluating the Solid Waste service currently being provided to City by Contractor, for negotiating this Agreement and for drafting this Agreement. After the Effective Date of this Agreement, the City shall provide Contractor with an invoice for these costs. Contractor shall pay the invoice within thirty (30) days of the receiving the invoice.

3.4 Contract Signing Fee. In addition to all other payments due from Contractor under this Agreement, within thirty (30) days of the Effective Date of this Agreement, Contractor shall pay City the sum of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000).

3.5 Special Event Sponsorship. Contractor shall provide City with Thirty-Seven Thousand Dollars (\$37,000) per calendar year, or such lesser amount as City may request, to sponsor special events such as 4th of July celebrations, Santee Fest, and holiday lighting events.

3.6 Landfill Disposal Credit. Concurrently with each Franchise Fee payment, Contractor shall tender payment to City representing the value of the landfill disposal credit granted to City pursuant to the "Landfill Settlement Agreement" dated September 14, 2011 to which City, San Diego Landfill System, LLC, Allied Waste Industries, Inc, and Republic Services, Inc are parties. Each quarterly payment shall be in an amount equal to the cost of disposing of 250 tons of solid waste at the Sycamore Canyon Landfill. Contractor shall provide documentation of the calculation of the credit payment.

3.7 Recycling Initiative Fee. In order to offset the financial impact to City of reductions in landfill host fee revenue caused by successful efforts to recycle and otherwise divert waste from landfills, Contractor shall pay to City the sum of Five Dollars (\$5) per ton of Recyclables generated in Santee above the aggregate Recyclables tonnage generated in the previous year. Each year during the term of this Agreement this payment shall be made within twenty (20) days of the end of the calendar year based upon the previous year's tonnage. This obligation shall remain in effect for the Recyclables tonnage generated during the final year of this Agreement, notwithstanding that the payment will be due following the expiration of this Agreement.

4. **TERM.**

4.1 Initial Term. The term of this Agreement shall commence on the Effective Date and continue until 11:59 p.m. on December 31, 2020.

4.2 Renewal or Amendment. Upon mutual written agreement between the City and the Contractor, in their respective sole and absolute discretion, this Agreement may be renewed upon all the same terms and conditions, or as may be amended by the Parties, for an additional mutually agreed upon term commencing at the expiration of the Initial Term. In addition, City shall have the option in its sole discretion of extending this Agreement for up to two one-year terms. City may implement either or both extension by providing notice to Contractor not later than 90 days in advance of the expiration of the then-current term of this Agreement. City may implement both extensions with one notice, or one initially and one later, or implement no extension.

4.3 Prior Agreements/Covenants. Any prior agreements between the Parties are terminated and superseded in their entirety, and of no further force and effect, as of the Effective Date, except for any existing indemnification obligations or other covenants that are expressly provided to survive the termination of the prior agreements.

5. **CONTRACTOR RESPONSIBILITY**

5.1 Agreement to Perform. Contractor agrees to perform all of its obligations under this Agreement for the Term. Contractor shall furnish all of the labor and equipment necessary for the collection, processing and disposal of all Solid Waste subject to the terms and conditions of this Agreement and in compliance with all Applicable Laws.

5.2 Contractor's Representations and Warranties. Contractor represents and warrants to the City that it has all applicable local, regional, state and federal permits and licenses to perform the services under this Agreement, including, but not limited to, local land use approvals, County of San Diego collector permits, truck operating permits and a City of Santee business license. Contractor further represents and warrants to the City that it has the professional and technical personnel required to perform the services in conformance with this Agreement and the Applicable Laws, and that it shall perform the services under this Agreement in a skillful and competent manner, consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California.

5.3 Contractor shall have an affirmative duty to select for disposal of City's Solid Waste only those landfill facilities which comply with state and federal law.

6. SCOPE OF SOLID WASTE MANAGEMENT SERVICES

6.1 Services. Contractor undertakes, and agrees, in accordance with the terms and conditions of this Agreement, to provide comprehensive Solid Waste Management Services, as set forth in Exhibit "A" to this Agreement, which is incorporated into this Agreement by this reference.

6.2 Source Reduction and Recycling Element. The California Public Resources Code requires the City to prepare and implement a Source Reduction and Recycling Element (SRRE) and a Household Hazardous Waste Element (HHWE). Contractor shall be responsible for implementing all provisions of these plans applicable to the Solid Waste Management Services specified in this Agreement.

6.3 City Regulations. Contractor's Solid Waste Management Services described in this Agreement and in Exhibit "A" to this Agreement shall be performed in accordance with the specifications contained within the Santee Municipal Code as they now exist or may from time to time be amended. City shall have the authority to issue regulations, orders, directions and instructions to Contractor from time to time regarding the collection, transportation, removal, disposal and processing of Solid Waste, Recyclables and Yard Waste, the performance of Contractor's services hereunder, and Contractor's compliance with the Municipal Code. Contractor agrees to comply therewith. Unless otherwise noted in this Agreement, or if changed by the City Council or City Manager, the Director or his designee shall be responsible for implementing all City actions necessary under this Agreement, including direction of Contractor. Contractor shall be entitled to rate adjustments pursuant to Section 8.3.3 in the event City exercises any of its rights described in this Section 6.3 which result in increased costs to Contractor.

6.4 Performance. Contractor undertakes and agrees to perform the obligations of this Agreement in a prompt, thorough, lawful, professional and sanitary manner and in accordance with the Applicable Laws.

7. OTHER SERVICES OF CONTRACTOR

7.1 City Facilities, Events and Services. Unless otherwise requested by City, Contractor shall provide collection, transportation and disposal services to all City operated facilities, as they currently exist or may exist during the term of this Agreement, at no charge to City, including City parks, playgrounds, buildings, and City street trash cans. In addition, Contractor shall provide collection, transportation and disposal services, at no charge, for City-sponsored or City-organized special events, provided that City has provided Contractor with seven (7) days' advance written notice of the event.

7.2 Curbside Bulky Item, Battery, Cell Phone and Textile/Shoe Collection. Contractor shall provide single-family residential Customers with curbside pick-up service upon request for Bulky Items, e-waste, household batteries, cell phones, textiles, and shoes. Contractor shall collect up to six (6) Bulky Items, household batteries, cell phones and/or e-waste

items per collection event, and unlimited bags of new or used textiles and shoes, to be scheduled at the request of the Customer, at no charge. Customers must request these collections at least two (2) weekdays prior to their regular collection day to receive this service on the next regularly scheduled collection day. To the extent possible, Contractor shall divert the collected items away from the Landfill to another facility where they can be either recycled or refurbished for reuse.

7.3 Universal Waste Collection. Contractor shall provide for the collection of Universal Waste at no charge to Residential Householders at the Buy-back/Drop-off Center. Contractor shall recycle, reuse or dispose of all Universal Waste in compliance with the Applicable Laws.

7.4 Holiday Tree Collection and Recycling. Contractor shall collect and recycle natural, undecorated trees, free of tree stands, placed at the curbside, for two weeks following the holiday season beginning December 26 of each year. The pickups shall occur on the Customer's regular collection day and shall be at no additional charge to the Customer.

7.5 Illegal Dumping. Contractor shall collect, transport and dispose of all spilled or illegally dumped Solid Waste within one business day of notice from the City. In the event that City requests Contractor to collect illegally dumped Solid Waste that appears to be on private property, City and Contractor shall cooperate to obtain permission from the property owner for Contractor's access to the property, and Contractor's obligation to collect the Solid Waste shall not occur until permission is obtained.

7.6 Sharps. Contractor shall provide, at a reasonable cost, a separate program for the collection of Sharps. This program shall not be exclusive, but Contractor agrees to maintain this program during the term of this Agreement.

7.7 Twice-Annual Citywide Collection Event. Twice each calendar year, Contractor shall organize a community cleanup event, during which Contractor shall collect at a central location compact fluorescent bulbs, household batteries, cell phones, Household Hazardous Waste, and paper to be securely shredded and recycled.

7.8 Recyclebank Rewards or Other Recycling Initiative Incentive Program. Contractor shall offer all residential customers the option of participating in a recycling incentive program at no charge. The features of this program shall initially be as described in Exhibit "C." Contractor may allow Recyclebank to change the parameters of the program at any time, provided that at no time shall the program provide materially fewer benefits for a given amount of recycling, or fewer or less prominent participating partners than as described in Exhibit "C".

8. BILLING AND PAYMENTS

8.1 Rates for Services. Contractor shall perform the responsibilities and duties described in this Agreement in consideration of the right to charge and collect from Customers for Solid Waste Management Services rendered, at rates not exceeding those approved by the City Council from time to time. Unless and until the rates approved by the City Council are modified by the City Council, Contractor shall provide the services required by this Agreement at no more than the rates and/or fees authorized by the City Council. Services for which rates

have not been approved by the City Council may be agreed upon in separate contracts between Contractor and each Customer requesting such special services. Contractor agrees and acknowledges that the City is not responsible for and does not guarantee or warrant, in any fashion, payment from the Customers to Contractor for services rendered.

8.2 Initial Rates for Services. Upon the Effective Date of this Agreement, Contractor's rates shall not exceed the rates set forth in Exhibit "B" to this Agreement, which is incorporated into this Agreement by this reference. The rates set forth in Exhibit "B" include reduced rates for residential customers who use 96-gallon recycling carts and reduced senior citizen and mobile home rates for customers who recycle.

8.3 Annual Permissive CPI Adjustment.

8.3.1 Adjustment Calculation. Effective on July 1 of each year, an annual permissive Consumer Price Index ("CPI") adjustment to the rates approved by the City Council may be made by the Contractor. The annual permissive CPI adjustment shall be the amount of the Consumer Price Index for San Diego, California for all urban consumers based upon the previous March to March period for which data is available, multiplied by .70, and for the portion of each rate representing Waste Management's disposal costs an additional .30 of the CPI for San Diego, California for all urban consumers based upon the previous March to March period for which data is available

8.3.2 City Manager Approval. The annual permissive CPI adjustments shall be subject to review and verification by the City Manager prior to implementation by the Contractor. Not less than thirty (30) days prior to implementation of an annual permissive CPI adjustment, Contractor shall provide the City Manager with notice of its intent to implement an annual permissive CPI adjustment, along with a calculation of the increased rates and data to support the calculation. If the City Manager objects to the information provided, the City Manager shall notify Contractor in writing and the Parties shall meet and confer regarding the issue. Contractor shall not implement the annual permissive adjustment until the City Manager reviews and verifies the adjustment. If the City Manager does not object to the information provided by Contractor within thirty (30) days of receipt of the notice and information from Contractor, the adjustment shall be deemed reviewed and verified.

8.3.3 Extraordinary Rate Adjustments. The City and Contractor may each, from time to time but not more than one (1) time each calendar year, request an extraordinary adjustment to the rates to reflect unanticipated increased or decreased costs of providing services, which may include but are not limited to:

(a) An event or circumstance occurs which could not reasonably be foreseen, and is extraordinary and not a usual business risk of Contractor; or

(b) An event or circumstance occurs which is beyond the control of City or Contractor; or

(c) It is necessary for Contractor to make a substantial change in its operation, or substantial capital investment in order to perform its obligations under this Franchise Agreement; or

(d) Changes to operations mandated by Applicable Law, including any new or changed fee or charge imposed by any governmental entity (excluding state or federal income taxes); or

(e) Increases in fees for disposal or processing of Solid Waste or Yard Waste if such material is being disposed of or processed at a third party facility not owned or operated by Contractor (e.g., Sycamore Landfill).

The party requesting the extraordinary rate adjustment shall submit information in support of the requested adjustment for review within ten (10) days of submitting its request. The City Council shall approve or deny the request within ninety (90) days of submittal, in its reasonable judgment. Contractor may appeal determinations by the City Council under this paragraph to a hearing officer, as provided in Section 15 of this Agreement.

8.4 Notice of Rate Adjustments. Contractor shall provide written notice to customers of rate changes. The notice shall be provided with, or as part of, a regular billing.

8.5 Financial Records. Contractor shall maintain complete and accurate financial records with respect to billings, gross revenue, costs, expenses and other such information reasonably required to verify performance of Contractor's obligations under this Agreement, or to support a requested rate adjustment. All such records shall be maintained in accordance with generally accepted accounting principles.

8.6 Other Records. In addition to financial records, Contractor shall maintain complete and accurate records for all aspects of Contractor's compliance with this Agreement including, but not limited to, collection route maps, customer lists and payment records, landfill disposal records by truck, local enforcement agency records of inspection, truck inspection records, SRRE and HHWE compliance records, customer complaints and other like materials.

8.7 Manner of Record Keeping. All records required to be kept by Contractor shall be clearly identified and readily accessible. Contractor shall provide free access to the representatives of City or their agent during all normal business hours to such books or records required to be maintained in paragraphs 8.5 and 8.6, and give the City the right to examine and audit same, and to make transcripts therefrom or copies as necessary. All records will be maintained for five years after the completion of the year which they were prepared.

8.8 Billing. Contractor shall prepare, mail and collect bills (or shall issue written receipts for cash payments) for Solid Waste Management Services provided by Contractor under this Agreement. Bills for services shall at a minimum be mailed to customers quarterly in advance of the provision of services.

8.9 Detail. Billings shall be of sufficient detail as to clearly delineate charges for each type of Solid Waste Management Service delivered, and must at a minimum be individually line listed. City shall retain the right to revise the billing format at Contractor's expense if, in City's opinion, additional billing information is deemed necessary.

8.10 Copies. Contractor shall maintain copies of billings and receipts in chronological order for a period of three (3) years after the date of service for inspection by City. Contractor

may, at its option, maintain those records in computer form, on microfiche, or in any other manner, provided that the records can be preserved and retrieved for inspection and verification in a timely manner.

8.11 Inserts. City from time to time may also direct Contractor to insert mailers with the Contractor billings. City will provide not less than thirty (30) days notice to Contractor prior to the date of any mailing of billings to permit Contractor to make appropriate arrangements for the inclusion of these materials.

8.12 Indemnification. In addition to Contractor's obligations under Article 12 herein, Contractor agrees to indemnify City against all fines or penalties imposed by the California Department of Resources Recycling and Recovery in the event that SRRE and HHWE objectives for Solid Waste Management Services for which Contractor is responsible, are not met for any reason by City, and to reimburse City for all costs of defense, including attorney's fees.

8.13 Cooperation. Contractor shall cooperate with and provide all information sought by any consultant employed by City or the County of San Diego in connection with the preparation and implementation of a waste composition study, field survey, or update to City's SRRE or HHWE.

9. COLLECTION EQUIPMENT AND PRACTICES

9.1 Number, Age and Identification of Vehicles. Contractor shall provide an adequate number of vehicles and equipment for the collection, disposal and transportation services for which Contractor is responsible under this Agreement. Contractor shall have available on all collection days at least one extra vehicle to respond to any and all complaints and emergencies. Contractor shall ensure that the average age of the collection vehicles regularly used in the provision of services under this Agreement does not exceed twelve (12) years, and that no support vehicle used in the provision of services under this Agreement shall be older than fifteen (15) years, except as may be authorized by the Director in his reasonable judgment based on the condition, maintenance history, usage and appearance of the vehicle. For purposes of this Agreement, the "age" of a vehicle shall consist of the age of the older of its chassis and body, rather than the age of the engine. Contractor's name, telephone number and unique vehicle number selected by Contractor shall be prominently displayed on its collection vehicles in letters and figures no less than three (3) inches high. All vehicles used by Contractor to provide services under this Agreement shall be registered with the Department of Motor Vehicles of the State of California.

9.2 Maintenance, Inspection and Cleaning of Vehicles. All vehicles used by Contractor to provide services under this Agreement shall be kept clean, safe, and in good repair, shall be sufficient to keep all collected materials covered during transportation, and shall be regularly inspected and certified by applicable regulatory agencies as required by law. Solid waste collection vehicles shall be washed at least once every seven (7) days. All vehicles used by Contractor to provide services under this Agreement shall be kept and maintained free from any leaks, including, without limitation, leaks of hydraulic oil, brake fluid, engine oil, fuel, or transmission fluid. Contractor shall inspect each service vehicle daily to ensure that all equipment is operating properly. Vehicles that are not operating properly, or vehicles in such

conditions as to be unsafe or excessively noisy, shall be removed from service until repaired and operating properly. Contractor shall maintain accurate records of all vehicle maintenance, recorded according to date and mileage (or hours of operation), and shall make those records available to the City upon reasonable request. The City shall also have the right, but not the obligation, to inspect Contractor's vehicles for compliance with these requirements upon reasonable advance notice to Contractor.

9.3 Alternative-Fuel Vehicles Required. All vehicles used by Contractor to provide services under this Agreement shall comply with all rules and regulations of the San Diego Air Pollution Control District, the California Air Resources Control Board and other Applicable Laws. All service vehicles used by Contractor to provide regular Solid Waste Management Services, as opposed to limited, emergency or ancillary services, under this Agreement shall be fueled by clean air alternative fuel rather than diesel fuel. Within one year of the Effective Date, Contractor shall introduce a fleet of new collection vehicles, all of which shall be fueled by liquid natural gas or compressed natural gas, and none of which shall have previously been used anywhere. Thereafter, all of Contractor's collection vehicles used in the performance of services under this Agreement shall be fueled by liquid natural gas or compressed natural gas, unless City approves a different fuel type for collection vehicles.

9.4 Clean Collection Practices and Vehicle Operations. Contractor shall not cause or permit the private property or City streets or property to be littered with trash or other debris because of Contractor's activities under this Agreement. Contractor shall clean up any such trash or debris in the immediate vicinity of any waste container or storage area that results from collection services under this Agreement. Contractor shall operate its vehicles in compliance with the California Vehicle Code and all Applicable Laws. Contractor shall not intentionally load vehicles in excess of limitations on vehicles imposed by federal, state or local law. Solid waste must be covered at all times, except when it is being loaded or unloaded.

10. PUBLIC ACCESS TO CONTRACTOR AND COMPLAINT RESOLUTION

10.1 Local Office and Regular Hours. Contractor's office hours shall be, at a minimum, from 8 a.m. to 5 p.m. Monday through Friday, and 8 a.m. to 12:00 p.m. on Saturday, except federal holidays. A representative of Contractor shall be available during office hours for communication with the public at Contractor's principal office. The representative shall, at a minimum, provide route maps and service information to the public. Contractor shall also maintain an emergency telephone number for use during other than normal business hours. Contractor shall have a representative or answering service available at said emergency telephone number during all hours other than normal office hours.

10.2 Service Complaints and Dispute Resolution. Contractor shall be responsible for the prompt, courteous and reasonable resolution of all customer complaints.

10.2.1 **Record of Complaints.** Contractor shall record in a separate log all complaints, noting the name and address of complainant, date and time of complaint, nature of complaint and nature and date of resolution. This complaint log shall be retained indefinitely by Contractor. City shall reserve the right to examine and make copies of any portion of the complaint log at any time.

10.2.2 Response to Complaints. Contractor shall respond to all customer complaints within twenty-four (24) hours, weekends and holidays excluded. In particular, if a complaint involves a failure to collect Solid Waste within the normal collection schedule, Contractor shall collect the Solid Waste in question within twenty-four (24) hours of being notified of the failure to collect the Solid Waste, provided that the Solid Waste has been properly presented for collection in accordance with the City's Municipal Code.

10.2.3 City Review. In the event that any customer reports to City that a complaint has not been resolved to the customer's satisfaction, City may require Contractor to present a detailed report outlining the nature of the complaint and the proposed resolution or actions taken to resolve the complaint. If, in City's opinion, the proposed resolution or actions taken are insufficient to satisfactorily resolve the claim, City at its reasonable discretion may require Contractor to carry out a process to satisfactorily resolve the complaint. The cost of this process will be born entirely by Contractor.

10.3 Customer Information. Contractor shall not market, sell, convey, donate or disclose to any person or entity any list with the names or addresses of Customers or information regarding the composition or content of Customers' waste unless required by Applicable Law, the City or a court of competent jurisdiction.

11. OWNERSHIP OF SOLID WASTE

11.1 Transfer of Ownership. Except as provided otherwise in state law (Public Resources Code §41950), title and ownership of Solid Waste, Recyclables and Yard Waste shall pass directly from the Customer to Contractor at the time of collection, and shall not vest in the City at any time except upon the City's exercise of its ownership option under paragraph 11.4. If the City directs delivery of Solid Waste or Yard Waste to a third party (e.g., Sycamore Landfill), title and ownership of such material will transfer to such third party upon delivery.

11.2 Ownership by Contractor. Contractor is granted the right to collect, transport, process, recover, recycle, retain, market, dispose of or otherwise use any such Solid Waste, Recyclables and Yard Waste, or any part thereof, in any legal fashion, and retain all benefits or profits resulting from such use; provided, however, that Contractor must at all times comply with the Applicable Law.

11.3 City's Right to Direct Disposal Location. The City has the right to direct that any Solid Waste or Yard Waste collected by Contractor be delivered to a facility designated by the City. This direction by the City shall be made with at least thirty (30) days written notice to Contractor. In the event that modifications to Contractor's operations are necessary to comply with the terms and conditions of this Section, and to the extent the required modifications affect Contractor's costs of doing business or its right to retain all benefits on profits resulting from the collection, processing or marketing of Yard Wastes, the rates for service may be adjusted, as provided in this Agreement, to reflect any increases or decreases in the costs or revenues arising from such modifications. Contractor agrees and acknowledges that the City's previous designation of the Sycamore Canyon Landfill as the location for Solid Waste deliveries does not entitle Contractor to any adjustment in rates pursuant to this paragraph.

11.4 City's Ownership Option. The City has the option of assuming ownership of Solid Waste or Yard Waste under this Agreement by providing Contractor with thirty (30) days written notice of City's assumption of ownership.

12. INDEMNIFICATION, INSURANCE AND PERFORMANCE BOND

12.1 Indemnification of City. Contractor agrees that it shall indemnify and hold harmless City, its officers, officials, employees, agents, assigns and any successor or successors to City's interest, from and against any and all loss, liability, penalties, claims, demands, actions or suits, of every kind and description, arising or resulting from: (i) the acts or omissions of Contractor, its agents, employees or subcontractors, in exercising the privileges granted to it by this Agreement; and (ii) the failure of Contractor, its agents, employees and/or subcontractors, to comply in all respects with the provisions and requirements of this Agreement. Contractor shall, upon demand of City, at Contractor's sole cost and expense, defend with an attorney chosen by Contractor and approved by the City (unless Contractor makes a reservation of rights with respect to any claim, in which case the City may engage separate counsel with reasonable costs and expenses to be reimbursed by Contractor) to defend City, its officers and/or employees against any and all claims, actions or suits in any legal proceedings, (whether judicial, quasi-judicial, administrative or legislative in nature) brought against City, its officers and/or employees arising or resulting from those situations described in (i) and (ii) above.

Contractor shall indemnify, defend with an attorney selected by City, protect and hold harmless City, its officers, officials, employees, agents, assigns and any successor or successors to City's interest from and against all claims, actual damages (including but not limited to special and consequential damages), natural resources damages, punitive damages, injuries, costs, response, remediation and removal costs, losses, demands, debts, liens, liabilities, causes of action, suits, legal or administrative proceedings, interest, fines, charges, penalties and expenses (including but not limited to attorneys' and expert witness fees and costs incurred in connection with defending against any of the foregoing or in enforcing this indemnity) of any kind whatsoever paid, incurred or suffered by, or asserted against, City or its officers, employees or agents arising from or attributable to any repair, cleanup or detoxification, or preparation and implementation of any removal, remedial, response, closure or other plan (regardless of whether undertaken due to governmental action) concerning any Hazardous Waste at any place where Contractor stores or disposes of Solid Waste pursuant to this Agreement. The foregoing indemnity is intended to and shall be construed to operate as an agreement pursuant to Section 107(c) of the Comprehensive Environmental Response, Compensation and Liability Act, "CERCLA", 42 U.S.C. Section 9067(e) and California Health and Safety Code Section 25364, to insure, protect, hold harmless and indemnify City from liability.

The foregoing (i) shall not apply to the extent that any costs and damages arise out of the active negligence or willful misconduct of City, its agents, employees, officers and contractors; (ii) is for the exclusive benefit of the City and in no event shall such indemnity inure to the benefit of any third party; (iii) shall not apply with respect to: (a) any Hazardous Waste or hazardous substance generated by the City or its agents and delivered by the City or its agents; (b) any materials delivered by Contractor to a disposal facility or processing facility designated by the City that is not owned or operated by Contractor, following such delivery, or (c) the

disposal or release of hazardous substances or Hazardous Waste, to the extent such disposal or release has resulted from the negligence or willful misconduct of the City or its agents.

This Section 12.1 shall survive the expiration of the period during which collection services are to be provided under this Agreement.

Notwithstanding the provisions of this Section 12.1., Contractor shall not be required to appear or act in any litigation based solely upon the negligent acts or omissions of City.

12.2 **Insurance.** Contractor shall obtain and shall require its subcontractors to obtain insurance of the types and in the amounts described below and satisfactory to City, provided that City may require increased insurance coverage limits over time to offset the effects of inflation.

12.2.1 **Commercial General Liability Insurance.** Contractor shall maintain time of occurrence based commercial general liability insurance or equivalent form with a combined single limit of not less than two million dollars (\$2,000,000) per occurrence. If such insurance contains a general aggregate limit, it shall apply separately to the Agreement or be no less than five million (\$5,000,000) the occurrence limit. Such insurance shall:

(a) Name City, its officials, officers, employees, agents, and consultants, as additional insureds with respect to performance of Services. Such additional insured status shall contain no special limitations on the scope of its protection to the above listed additional insureds.

(b) Be primary with respect to any insurance or self insurance programs covering City, its officials, officers, employees, agents, and consultants.

(c) Contain standard separation of insureds provisions.

12.2.2 **Business Automobile Liability Insurance.** Contractor shall maintain business automobile liability insurance or equivalent form with a combined single limit of not less than \$2,000,000 per occurrence. Such insurance shall include coverage for owned, hired and non-owned automobiles.

12.2.3 **Workers' Compensation Insurance.** Contractor shall maintain workers' compensation insurance with statutory limits and employers' liability insurance with limits of not less than \$1,000,000 per accident.

12.2.4 **Certificates/Insurer Rating/Cancellation Notice.**

(a) Contractor shall, prior to commencement of the Services, furnish to City properly executed certificates of insurance, and certified copies of endorsements, which shall clearly evidence all insurance required in this Section. In addition, upon request by City, Contractor shall provide copies of all insurance policies for review by the City at Contractor's business location. Insurance policies required by this agreement shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the City.

(b) Contractor shall maintain such insurance from the time the Services commence until the Services are completed, except as may be otherwise required by this Section.

(c) Contractor shall place insurance with insurers having an A.M. Best Company rating of no less than A:VIII and licensed to do business in California.

(d) Contractor shall replace certificates, policies and endorsements for any insurance expiring prior to completion of the Services.

12.2.5 Performance Bond. Prior to execution of this Agreement, Contractor shall deposit with City either a letter of credit or a performance bond (collectively referred to as the "Performance Bond") in the amount of \$250,000. The Performance Bond shall serve as security for the faithful performance of Contractor of all of the provisions and obligations of this Agreement. The Performance Bond shall contain terms acceptable to City. If Contractor deposits a letter of credit with City, interest, if any, relating to any cash deposits that may exist with regard to that letter of credit shall accrue to Contractor. City may, at any point during the term of this Agreement, require that the amount of the Performance Bond be increased by an amount equal to the cumulative increase in the Consumer Price Index for San Diego County, California, for all urban consumers since the Effective Date or since the last increase in the amount of the bond.

12.2.6 Compliance with Environmental Regulations. The contractor, all employees, agents and subcontractors who have a reasonable probability of coming into contact with hazardous materials shall be adequately trained to comply and shall comply with all laws and regulations relating to the care and protection of the environment in the performance of the Work or any portion thereof.

13. TERMINATION AND OTHER REMEDIES

13.1 Termination. If the City determines that Contractor's performance pursuant to this Agreement has not been in conformity with reasonable industry standards which obtain in similar cities in Southern California, the provisions of this Agreement, the requirements of the City Municipal Code, the requirements of the California Department of Resources Recycling and Recovery, including, but not limited to, requirements for source reduction and recycling (as to the waste stream subject to this Agreement) or any other applicable federal, state or local law or regulation, including but not limited to the laws governing transfer, storage or disposal of hazardous waste, City may advise Contractor in writing of such deficiencies. City may, in such written instrument, set a reasonable time within which correction of all such deficiencies is to be made. Unless otherwise specified, a reasonable time for correction shall be sixty (60) days from the receipt by Contractor of such written notice. The City Manager shall review Contractor's response and refer the matter to the City Council or decide the matter and notify Contractor of that decision, in writing. A decision or order of the City Manager shall be final and binding on Contractor if Contractor fails to file a "Notice of Appeal" with City within thirty (30) days of receipt of City Manager's decision. Within ten (10) working days of receipt of a Notice of Appeal, the Manager shall either refer the appeal to the City Council for proceedings in

accordance with this Article, or refer the matter to a hearing officer as provided in Section 15 of this Agreement.

13.2 City Council Review. If referred to the City Council, the matter shall be set for hearing by the City Clerk. The City Clerk shall give Contractor, and any other person requesting notice fourteen (14) days written notice of the time and place of the hearing. At the hearing, the City Council shall consider the report of the City Manager indicating the deficiencies, and shall give Contractor, and any other interested person, a reasonable opportunity to be heard.

13.3 City Council Determination. Based on the evidence presented at the public hearing, the City Council shall determine by resolution whether this Agreement should be terminated or liquidated damages imposed. If, based upon the record, the City Council determines that the performance of Contractor is in breach of any material term of this Agreement or any material provision of any applicable federal, state or local statute or regulation, the City Council, in the exercise of its sole discretion, may terminate forthwith this Agreement or impose liquidated damages, as defined below. The decision of the City Council shall be final and conclusive, subject to review pursuant to Section 15 of this Agreement. Contractor's performance under this Agreement is not excused during the period of time prior to the City Council's final determination as to whether such performance is deficient.

13.4 Rights Cumulative and Not Exclusive. This right of termination or to impose liquidated damages is in addition to any other rights of City upon a failure of Contractor to perform its obligations under this Agreement.

13.5 Other Grounds for Termination. City further reserves the right to terminate Contractor's franchise or impose liquidated damages in the event of any of the following:

13.5.1 Fraud or Deceit. If Contractor practices, or attempts to practice, any fraud or deceit upon City.

13.5.2 Insolvency. If Contractor becomes insolvent, unable or unwilling to pay its debts, or upon listing of an order for relief in favor of Contractor in a bankruptcy proceeding.

13.5.3 Insurance. If Contractor fails for any period of time to provide or maintain in full force and effect, the Workers' Compensation, liability and indemnification insurance coverages or performance bond as required by this Agreement, and/or fails to provide timely notice that any required bond or policy of insurance has expired, been terminated or been reduced. Notwithstanding any provisions of this Agreement to the contrary, including provisions pertaining to the cure of breaches, any such failure shall be an incurable breach of this Agreement.

13.5.4 Willful Violations. If Contractor willfully violates any material orders or rulings of any regulatory body having jurisdiction over Contractor relative to this Agreement, provided that Contractor may contest any such orders or rulings by appropriate proceedings conducted in good faith, in which case no breach of this Agreement shall be deemed to have occurred.

13.5.5 Cessation of Services. If Contractor ceases to provide Solid Waste Management Services as required under this Agreement over all or a substantial portion of its service area for a period of seven (7) days or more, for any reason within the control of Contractor. (For purposes of this section, a labor strike or similar organized work stoppage will be deemed to be within the control of Contractor.)

13.5.6 Failure to Make Payment. If Contractor willfully fails to make any payments required under this Agreement and/or refuses to provide City with required information, reports and/or test results in a timely manner as provided in this Agreement.

13.5.7 Crimes. If Contractor, one of its officers or managers, or a business controlled by Contractor is found guilty of any criminal law relating to Waste Management Services, or is found liable for violation of a law relating to antitrust, unfair trade practices, or dumping of refuse or hazardous waste..

13.5.8 Other Acts or Omissions. If any other act or omission by Contractor materially violates the terms, conditions or requirements of this Agreement, City Ordinances, City Municipal Code, or state and federal law related to Waste Management Services, as they may be amended from time to time or any order, directive, rule or regulation issued thereunder and is not corrected or remedied within the time set in the written notice of the violation or, if Contractor cannot reasonably correct or remedy the breach or remedy such violation within the time set forth in such notice and diligently effect such correction or remedy thereafter.

13.6 Hearing Officer Review. Contractor may appeal determinations by the City Council under this Section to a hearing officer, as provided in Section 15 of this Agreement.

14. LIQUIDATED DAMAGES

14.1 Liquated Damages Appropriate. City finds and Contractor agrees, that as of the time of the execution of this Agreement, it is impractical, if not impossible, to reasonably ascertain the extent of damages which will be incurred by City as a result of a material breach of Contractor of its obligations under this Agreement. The factors relating to the impracticability of ascertaining damages include, but are not limited to, the fact that: (a) substantial damage results to members of the public who are denied services or denied quality or reliable service; (b) such breaches cause inconvenience, anxiety, frustration and deprivation of the benefits of this Agreement in subjective ways and in varying degrees of intensity which are incapable of measurement in precise monetary terms; (c) that services might be available at substantially lower costs than alternative services and the monetary loss resulting from denial of services or denial of quality or reliable services is impossible to calculate in precise monetary terms; and (d) the termination of this Agreement for such breaches, and other remedies are, at best, a means of future correction and not remedies which make the public whole for past breaches.

14.2 Amount of Liquidated Damages. Accordingly the City Council may, in its discretion, assess liquidated damages not to exceed the sum of five thousand dollars (\$5,000) per day, for each calendar day that Contractor is in material breach of this Agreement. The daily amount of liquidated damages which may be assessed shall be increased by the past year's Consumer Price Index for the San Diego area on each anniversary of the Effective Date of this

Agreement. In addition, the City Council or City staff may order an assessment against the cash bond required by this Agreement, commence proceedings for the termination of this Agreement, or both.

14.3 Reasonableness. City finds, and Contractor acknowledges and agrees that the above-described liquidated damages provisions represent a reasonable sum in light of all of the circumstances. Liquidated damages shall be applicable to each calendar day during which Contractor has been found by the City Council to be in material default pursuant to this Article. Contractor shall pay any liquidated damages assessed by City Council within ten (10) days after they are assessed. If they are not paid within the ten-day period, City may withdraw them from the security fund established by the performance bond required by this Agreement, collect the liquidated damages through the courts or by a reduction in Contractor's rates, order the termination of the Franchise granted by this Agreement, or any combination of these remedies.

14.4 Hearing Officer Review. Contractor may appeal determinations by the City Council under this Section to a hearing officer, as provided in Section 15 of this Agreement.

15. ADMINISTRATIVE HEARING PROCEDURES

15.1 Hearing Officer. If either the City Manager or City Council refers a matter to a hearing officer, or Contractor appeals a determination of the City Council, City and Contractor shall mutually agree on a hearing officer. If Agreement is not reached within twenty (20) working days of the filing of the notice of appeal, then Contractor shall select the hearing officer from a list of three potential hearing officers who are retired California Superior Court judges or Appellate court justices, none of whom are related to the parties, prepared by the City Attorney.

15.2 Hearing. The hearing shall be conducted according to California Code of Civil Procedure section 1280, et seq. The exclusive venue shall be in the City of Santee, California. A hearing officer to whom a matter is referred shall have the authority to: (a) order Contractor to undertake remedial action to cure the breach and to prevent occurrence of similar breaches in the future; (b) assess damages and/or levy a penalty upon Contractor consistent with the terms of this Agreement; or (c) find there has been no breach. The amount of the penalty shall be reasonably related to the seriousness of the breach of this Agreement.

15.3 Fees. The party losing the hearing shall be liable for the hearing officer's fees.

15.4 Failure to Comply Constitutes Breach. Any failure of Contractor to comply with the hearing officer's order shall be deemed a material breach of this Agreement, and may be grounds for termination of this Agreement.

15.5 Timing of Hearing; Procedures. The hearing officer shall commence the hearing within thirty (30) days of selection unless the parties and the hearing officer otherwise agree. Any party to the hearing may issue a request to compel reasonable document production from the other party. Disputes concerning the scope of document production and enforcement of document requests shall be subject to agreement by the parties, or if agreement is not reached within twenty (20) days of that document request, then by disposition by order of the hearing officer. Any such document request shall be subject to the proprietary rights and rights of privilege of the parties, and the hearing officer shall adopt procedures to protect such rights.

Except as may be otherwise specifically agreed by the parties, no other form of pretrial discovery shall be available to the parties; provided that if either party notifies the hearing officer that a material violation of the Franchise or rights in connection therewith is claimed by either party, the provisions of Code of Civil Procedure section 1283.05 shall apply.

15.6 No Ex Parte Contact. Neither party may communicate separately with the hearing officer after the hearing officer has been selected. All subsequent communications between a party and a hearing officer shall be simultaneously delivered to the other party. This provision shall not apply to communications made to schedule a hearing or request a continuance.

15.7 Stay. Until final judgment is entered from the hearing officer proceeding under the foregoing provisions and the time for appeal or other post-judgment petition has expired, the imposition or enforcement of any penalties or sanctions provided in this Agreement and related to the subject matter of the hearing shall be stayed. The hearing officer may modify or cancel any proposed penalties or sanctions upon a finding that the party subject thereto acted with substantial justification, or if the interests of justice so require.

15.8 Petition. Any party to a hearing may petition the Superior Court in San Diego County, California to confirm, correct or vacate the award on the grounds stated in Title 9 of the California Code of Civil Procedure. Any proceedings on appeal shall be in accordance with the Code of Civil Procedure.

16. **REPORTING, ACCOUNTING AND AUDITING**

16.1 Quarterly Reports. Contractor shall, on a quarterly and annual basis (or on such more frequent basis as may be required by the California Department of Resources Recycling and Recovery), provide reports to City with respect to Contractor's operations as may be reasonably necessary or appropriate to the performance of any of the rights, functions or duties of City in connection with this Franchise Agreement, and/or pursuant to local, state and federal laws, and to enable City to effectively review Contractor's performance and quality of service. All such reports must contain information sufficient for City to report its progress to the State regarding the implementation of City's SRRE and HHWE pursuant to the California Public Resources Code. These reports shall be comprised of the following:

16.1.1 Contents of Quarterly Reports. Contractor shall submit quarterly program reports. These reports shall be due within twenty (20) calendar days after the end of each quarter of operations. If the twentieth calendar day falls on a weekend or holiday, the reports shall be due on the next working day. At a minimum, the reports shall include:

(a) Identification of the total tonnage of refuse collected and the manner in which it was disposed.

(b) Identification of tonnage collected and disposed of due to non-recyclability or contamination in the Recyclables collection program.

(c) Residential recycling program monthly participation rates and monthly set-out rates on each collection route.

- (d) The number of customers receiving services by service type.
- (e) Description of progress in performing Solid Waste Management Services including problems encountered and resolution.
- (f) Discussion of public education activities.
- (g) Changes to or modifications of collection and processing activities.

16.1.2 Contents of Annual Reports. Contractor shall submit annual program reports. These reports shall be submitted to City no later than forty-five (45) calendar days after the end of each year of operation. If the forty-fifth calendar day falls on a weekend or holiday, the reports shall be due on the next working day. At a minimum, these reports shall include:

- (a) All report items required for inclusion in the quarterly reports.
- (b) Upon the City's request, a certified financial statement of Contractor's parent (Waste Management, Inc.) with an opinion prepared by an independent Certified Public Accountant who shall have no financial interest in the business of Contractor.
- (c) An updated list of all vehicles used for collecting, hauling or disposing of Solid Waste, Recyclables and Yard Waste in City including the make, type, year, license number, identification number and ownership.
- (d) The names, titles and addresses of the owners, officers, directors and major stockholders (holding 5% or more stock) of Contractor.
- (e) The names and titles of all supervisory personnel used in providing Solid Waste Management Services for City.
- (f) Upon the City's request, a description of all cases of public or private property damage and personal injury that have occurred while providing Solid Waste Management Service.
- (g) Upon the City's request, a description of all traffic citations received.

16.1.3 City Audit. Failure by Contractor to provide quarterly or annual reports required under the terms of this Franchise Agreement, will, at a minimum, allow City to employ an independent certified public accounting firm to prepare such reports, and Contractor shall be liable for and shall pay the costs and expense. In addition, Contractor's books and records shall be subject to audit and inspection for the purpose of reviewing billing operations, accounts receivable and customer service, by either party, its auditors or other agents, at any reasonable time upon reasonable notice. Such audit or inspection shall take place at City's City Hall, if reasonably practicable, or at a Contractor facility in San Diego County. City shall initially bear the cost of such audit. If such audit discloses a material breach of this Agreement or an underpayment of the franchise fees or other sums due under this Agreement in excess of five percent (5%) of the amount which should have been paid, Contractor shall promptly tender to

City the amount of such underpayment, together with interest at the rate of twelve percent (12%) computed from the date of underpayment, and shall further reimburse City for the entirety of its audit costs, including, without limitation, auditor's costs and expenses, internal costs and expenses, and legal and other third party expenses. If such audit discloses an underpayment of less than five percent (5%), Contractor shall promptly repay such underpayment, together with interest at the rate of twelve percent (12%) computed from the date of underpayment, and City shall bear the costs of the audit. If such audit discloses an overpayment, City shall promptly repay such underpayment without interest and City shall bear the costs of the audit.

16.2 Other Information. Contractor shall provide City with a copy of all reports, or other material adversely affecting Contractor's ability to perform Solid Waste Management Services, including reports related to any landfill used by Contractor during the term of this Agreement, and papers submitted by Contractor to any court or local, state, regional, or federal regulatory agency, or received from such an agency or court. If sent by Contractor, the copy shall be sent simultaneously with submission to the agency. If received from an agency or court, the copy must be mailed to City within five (5) business days.

17. GENERAL PROVISIONS

17.1 Force Majeure. Contractor shall not be in default under this Agreement in the event that the collection, transportation, processing and/or disposal services of Contractor are temporarily interrupted or discontinued for any of the following reasons, including threats thereof (to the extent such threats hinder Contractor's ability to perform under this Agreement): riots, wars, civil disturbances, power failures, terrorism, insurrections, epidemics, hurricanes, earthquakes, floods, acts of God, government orders and regulations, or other similar catastrophic events which are beyond the reasonable control of Contractor. It is specifically understood that "other catastrophic events" exclude strikes, lockouts and other labor disturbances to the extent beyond seven (7) calendar days; as such, Contractor shall not be in default for failing to provide Solid Waste Management Services for the first seven calendar days of a labor disturbance. When any of these events interrupt collection, transportation, processing and/or disposal of Solid Waste by Contractor as required under this Agreement, City may elect to exercise its rights under Section 13.

17.2 Annexation. In the event that any community, neighborhood or other territory is hereafter annexed to City, Solid Waste collection, transportation, processing, disposal and recycling services shall, if requested by City, be immediately provided to such area by Contractor pursuant to this Agreement, subject to any rights the existing Solid Waste Franchisee in such territory may have to continue providing services in such territory. City agrees to give all required notice and to do all acts necessary under applicable statutes to accomplish this result as soon as permissible by law.

17.3 Independent Contractor. It is expressly understood and agreed that Contractor shall perform all work and services described as an independent contractor and not as an officer, agent, servant or employee of City; that Contractor shall have the exclusive control over the details of the services and work performed hereunder and all persons performing the same; that Contractor shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors and subcontractors, if any; and that nothing shall be construed as

creating a partnership or joint venture between City and Contractor. Neither Contractor nor its officers, employees, agents or subcontractors shall obtain any rights to retirement benefits, workers' compensation benefits or any other benefits which accrue to City employees.

17.4 Law to Govern Venue. It is understood and agreed by the Parties that the law of the State of California shall govern the interpretation of this Agreement. Any action to interpret or enforce this Agreement shall be brought and maintained exclusively in the courts of and for San Diego County.

17.5 Fees and Gratuities. Contractor shall not, nor shall it permit any agent, employee or subcontractor employed by it to request, solicit, or demand either directly or indirectly, any compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Agreement. Contractor shall not, nor shall it permit any agent, employee or subcontractor employed by it to accept any monetary compensation or gratuity for the collection of Solid Waste otherwise required to be collected under this Agreement.

17.6 Amendment. Except as may otherwise be specifically provided in this Agreement, this Agreement may be amended or modified only by a written agreement duly authorized and executed by both City and Contractor.

17.7 Assignment and Transferability; Subcontracting. Except as provided in Section 17, this Agreement is not assignable or transferable in whole or in part by Contractor, voluntarily, involuntarily, or by operation of law or otherwise except by written amendment to this Agreement signed by both Parties. Any request made to City by Contractor for approval of an assignment or transfer of this Agreement shall be accompanied by a non-refundable deposit in the amount of \$20,000 to cover City's costs, including attorneys' fees, in evaluating the proposed assignee or transferee and the potential benefit or detriment to City of the proposed assignment or transfer. In addition, the Solid Waste Management Services called for in this Agreement, as opposed to the ancillary services such as oil spill clean-up, shall not be subcontracted for by Contractor without the City's prior written approval.

The sale, transfer, assignment or hypothecation of a majority ownership interest in Contractor after the Effective Date of this Agreement, including a cumulative sale, transfer, assignment or hypothecation, shall be deemed an assignment within the meaning of this Section and is prohibited in the absence of a written amendment to this Agreement. Placement of an ownership interest in a living trust shall not be deemed an assignment within the meaning of this Section, but distribution of the ownership interest from the living trust shall be deemed an assignment. In addition, the sale, transfer, assignment or hypothecation of a majority ownership interest in Contractor to an Affiliated Company shall not be deemed an assignment within the meaning of this Section.

Any dispute between the City and the Contractor with respect to a determination of whether a sale, transfer, assignment, subcontracting, or hypothecation of a number of shares or other units of ownership in Contractor has occurred or will occur shall be subject to reference pursuant to Code of Civil Procedure Section 638, et seq. with the presiding judge of the San Diego County Superior Court.

17.8 Compliance with Applicable Law. Contractor agrees that it will comply with all provisions of the Applicable Law, including City's business license ordinance, and will obtain all licenses and permits, and pay all taxes and fees, required under the Applicable Law.

17.9 Notices. All notices, demands, requests, consents or other communications which this Agreement contemplates, authorizes, requires or permits either Party to give to the other, shall be in writing and shall be personally delivered; or sent by overnight mail, delivery service, or registered or certified mail, postage prepaid, return receipt requested; or by facsimile transmission, all addressed to the respective Party as follows:

To City: City of Santee
10601 North Magnolia Avenue
Santee, CA 92071
Attn: City Manager

Copy to: Best Best & Krieger LLP
655 West Broadway, Suite 1500
San Diego, CA 92101
Attn: Shawn Hagerty

To Contractor: USA Waste of California, Inc.
1001 W. Bradley Ave.
El Cajon, CA 92020-1627
Attn: District Manager

Copy to: Waste Management Western Group
7025 N. Scottsdale Road
Suite 200
Scottsdale, AZ 85253
Attn: Group Legal Counsel

or to such other address as either Party may from time to time designate by notice to the other given in accordance with this Section. Such notice shall be deemed effective on the date personally served or, if mailed, three (3) days from the date such notice is deposited in the mail.

17.10 Savings Clause and Entirety. If any provision of this Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Agreement.

17.11 Attorney's Fees. In the event of any claim or action or proceeding brought by either Party against the other under or in connection with the subject matter of this Agreement, the prevailing Party shall be entitled to recover from the losing Party as part of the judgment in such action all reasonable costs, expenses, and attorneys' fees, including those costs, expenses and attorneys' fees incurred in defending any counterclaim or cross-complaint brought in such action and incurred in any appeals, all in such amount as the court shall judge reasonable.

17.12 Entire Agreement. Commencing on the Effective Date, this Agreement supersedes any previous agreements either oral or written by the Parties and represents the entire understanding between the Parties; provided, however, that this Agreement shall not relieve Contractor of any financial obligations that may have existed under the former franchise agreement.

17.13 Changes in Law. In the event that new or amended local, state or federal laws or regulations are enacted after the date on which this Agreement is executed, or if existing laws or regulations are challenged and overturned, and such has the effect of materially altering the terms of this Agreement or preventing or precluding compliance with one or more provisions of this Agreement, then (i) Contractor may request a rate adjustment pursuant to Section 8.3.3 or (ii) if a rate adjustment is not an adequate remedy, such provisions of this Agreement may be modified or suspended by the mutual agreement of the Parties as may be necessary to comply with such new or amended local, state or federal laws or regulations. With regard to (ii) above, (a) the City and the Contractor shall agree to enter into good faith negotiations regarding such an amendment of this Agreement that reflects the extent to which the provisions hereof have been so modified or suspended, and (b) if the City and Contractor cannot agree, despite their good faith efforts, upon an amendment to the Agreement, then the Party who is negatively affected by the change in law shall have the right to terminate this Agreement, upon ninety days written notice

17.14 Rights of City to Perform During Emergency. Should Contractor, for any reason whatsoever, including the occurrence or existence of any of the events or conditions set forth in Section 17.1, fail, refuse or be unable to collect, transport, process and dispose of any or all of the Solid Waste for which it is obligated under this Agreement to collect, transport and dispose of for a period of more than forty-eight (48) hours, and if as a result thereof Solid Waste should accumulate in City to such an extent, in such a manner, or for such a time that the City Manager should find that such accumulation endangers or menaces the public health, safety or welfare, then in such event City shall have the right, in addition to any other rights under this Agreement or pursuant to law, upon twenty-four (24) hour prior written notice to Contractor, or without such notice should the City determine that a further delay would endanger the health, safety, and welfare of City residents during the period of such emergency, to take possession of any or all equipment of Contractor previously used and currently necessary in the collection, transportation, processing and disposal of City Solid Waste or which Contractor would otherwise be obligated to collect and transport pursuant to this Agreement. Contractor agrees that in such event it will fully cooperate with City to affect such a transfer of possession for City's use. Contractor agrees that, in such event, City may take possession of and use all of said equipment and facilities without paying Contractor any rental or other charge, provided that City agrees that, in such event, it assumes responsibility for the proper and normal use of such equipment and facilities.

Contractor further agrees that, in such event, it shall reimburse City for any and all costs and expenses, including the cost of City employees and/or third party laborers in the performance of emergency services pursuant to this Section, incurred by City in taking over possession of the above mentioned equipment and facilities in such manner and to the extent that would otherwise be required of Contractor under the terms of this Agreement. City shall first subtract such reimbursement costs from compensation otherwise due Contractor under this

Agreement, and to the extent such costs exceed those due Contractor, an itemized statement of costs and expenses shall be submitted for reimbursement to Contractor. To facilitate reimbursement of costs and expenses to City, Contractor agrees to assign its right to receive payment from its Customers for services rendered pursuant to this Agreement to the extent that such services have been rendered to said Customers by City and for amounts necessary to reimburse City for its actual costs to perform the emergency services. Contractor further agrees to allow City to collect such payments directly from the Customers. City agrees that it shall relinquish possession of all of the above mentioned property to Contractor upon written notice from Contractor to the effect that it is able to resume its responsibilities under this Agreement. City shall be solely responsible for the safe operation and care of Contractor equipment, as well as safe provision of emergency services pursuant to this Section. It is agreed that City's exercise of its rights under this Section shall not affect City's rights under Section 13 of this Agreement.

[Signatures on following page]

**SIGNATURE PAGE
TO
AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES**

City and Contractor have signed this Exclusive Franchise Agreement for Solid Waste Management Services as of this 19 day of Dec., 2012.

City:

City OF SANTEE, a California municipal corporation

By: Keith Till

Keith Till
City Manager

Contractor:

USA WASTE OF CALIFORNIA, INC., a Delaware corporation

By: [Signature]

Title: President - Southern California Area

ATTEST:

By: [Signature]

City Clerk

APPROVED AS TO FORM:

By: [Signature]

City Attorney

EXHIBIT "A"

SCOPE OF SERVICES

Curbside Collection: Contractor shall provide collection, transportation and disposal services to all single family residents one time per week. These services shall consist of collecting, transporting and disposing of trash, green waste and recyclable materials. Contractor shall provide each residence with carts to contain each type of collectable. Carts shall vary in size and established rates shall be based upon cart size. Carts shall be 38 gallon, 64 gallon and 96 gallon. Exhibit B identifies rates for each size cart service combination.

Bin Service – Trash: Contractor shall provide collection, transportation and disposal services to all multi-family and business properties a minimum of one time per week. Containers shall vary in size including 1.5 cubic yards, 3 cubic yards and 4 cubic yards. Established rates shall be based upon container size and frequency of pick up. Exhibit B identifies rates for each size container and frequency of pick up.

Bin Services – Recycling: Contractor shall provide collection, transportation and recycling services to all multi-family and business properties a minimum of one time per week. Containers shall vary in size including 1.5 cubic yards, 3 cubic yards and 4 cubic yards. Established rates shall be based upon container size and frequency of pick up. Exhibit B identifies rates for each size container and frequency of pick up.

Solid Waste Transfer Body Service: Contractor shall provide collection, transportation and disposal of solid waste by way of transfer bodies. Transfer bodies shall be available in 10 cubic yard, 20 cubic yard, 30 cubic yard and 40 cubic yard sizes. There is a per day charge for the use of the container. Established rates shall be based upon container size. Exhibit B identifies rates for each size container.

Special Services: Special pickups for unrouted or unscheduled service shall be available for all customers subscribing to Bin Service. Exhibit B identifies rates for special pickups. Collection from parks, playgrounds, City government building, and city street trash cans shall be made without charge.

Exhibit B - Initial Rates

Curbside Collection

Standard Single Family Automated Cart Service

Trash Gallon	Green Gallon	Recy Gallon			
64	64	64	per month	\$	19.30
38	64	64	per month	\$	19.30
38	64	96	per month	\$	19.30
64	64	96	per month	\$	19.30
96	64	64	per month	\$	29.28
96	64	96	per month	\$	29.28

Mobile Home/Senior Service

38	64	NA	per month	\$	13.57
38	64	64	per month	\$	13.57

Additional Refuse Cart

per month \$ 10.88

One additional Green Waste and/or Recycling cart will be free of charge, after each additional one will be a charged.

Commercial Bin Service

1.5 cubic yard container

One pick-up per week	per month	\$	74.38
Each additional weekly pick-up	per month	\$	58.77

2 cubic yard container

One pick-up per week	per month	\$	86.11
Each additional weekly pick-up	per month	\$	62.44

3 cubic yard container

One pick-up per week	per month	\$	99.00
Two pick-up per week	per month	\$	170.44
Three pick-up per week	per month	\$	240.30
Four pick-up per week	per month	\$	319.77
Five pick-up per week	per month	\$	399.24
Six pick-up per week	per month	\$	478.71
Seven pick-up per week	per month	\$	558.18

4 cubic yard container

One pick-up per week	per month	\$	114.27
Two pick-up per week	per month	\$	212.45
Three pick-up per week	per month	\$	310.63
Four pick-up per week	per month	\$	408.81
Five pick-up per week	per month	\$	506.99
Six pick-up per week	per month	\$	605.17
Seven pick-up per week	per month	\$	703.35

Exhibit B - Initial Rates

Commercial Bin Service (continued)

5 cubic yard container

One pick-up per week	per month	\$ 121.42
Two pick-up per week	per month	\$ 225.73
Three pick-up per week	per month	\$ 330.05
Four pick-up per week	per month	\$ 434.37
Five pick-up per week	per month	\$ 538.68
Six pick-up per week	per month	\$ 643.00
Seven pick-up per week	per month	\$ 747.31

6 cubic yard container

One pick-up per week	per month	\$ 132.04
Two pick-up per week	per month	\$ 245.48
Three pick-up per week	per month	\$ 358.93
Four pick-up per week	per month	\$ 472.37
Five pick-up per week	per month	\$ 585.82
Six pick-up per week	per month	\$ 699.26
Seven pick-up per week	per month	\$ 812.70

3 cubic yard Temporary Bin

Delivery, Removal & up to 7 days rental	per bin	\$ 112.25
Each additional pick-up	each	\$ 53.15

Recycling Bin Service

3 cu One pick-up per week	per month	\$ 45.11
Each additional weekly pick-up	per month	\$ 35.69

4 cu One pick-up per week	per month	\$ 56.75
Each additional weekly pick-up	per month	\$ 44.82

6 cu One pick-up per week	per month	\$ 68.32
Each additional weekly pick-up	per month	\$ 53.98

Rolloff Service

Transfer bodies billed hauling fee plus disposal fee per ton*

10 cubic yard - hauling fee*	per haul	\$ 268.88
20 cubic yard - hauling fee*	per haul	\$ 188.22
30 cubic yard - hauling fee*	per haul	\$ 197.17
40 cubic yard - hauling fee*	per haul	\$ 206.15

* Plus 10% landfill surcharge to offset administrative costs

Rental - each transfer body	per day	\$ 5.49
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Exhibit B - Initial Rates

Special Services

Special Pick-Up up to 3 cubic yards	each	\$ 53.15
Additional Standby and Loading Time	per hour	\$ 63.96
(Special pick-up assumes 15 minute loading and standby time by contractor. Additional standby and loading time shall be billed at the rate of \$63.41 per hour, pro-rated to the nearest 15 minute increment.)		
Restart Fee- The fee for Restarting commercial service when a permanent account has been terminated for non payment.		\$ 20.00
Commercial Return to Service Fee- The return to service fee for two or more calls in a one-month period by a bin customer to return to provide service.		\$ 64.71
Residential Return to Service Fee- The return to service fee for two or more calls in a one-month period by a residential customer to return to provide service.		\$ 32.94
Copy Fee- The charge for copies requested by customers.		\$ 1.18
Bin exchange/steam clean fee - allowed 2 per year. After second exchange within one year, there will be a charge per exchange.		\$ 64.71
Bin paint charge fee - allowed 1 per year. After first paint within one year, there will be a charge per paint request.		\$ 102.35
Interest Charge-Contractor may charge 1.5% interest per month on any delinquent account for such time as the bill remains unpaid after its due date.		
Late Fee - There will be a minimum fee on any delinquent account		\$ 3.53
Single Family customers shall be charged for bulky item pick up exceeding 12 bulky item pickups in a calendar year (6 items per pickup, 2 times per year max).		\$ 41.18
Bins that are overloaded can be charged a fee as long as supported by evidence		\$ 35.29
Split Bin Recycling One time per Week Service		\$ 101.18
A Bin that needs to be moved:		
5 to 30 feet		\$ 4.00
31 to 50 feet		\$ 5.42
Additional 25 feet increments		\$ 5.42

Exhibit B - Initial Rates

Commercial Compaction Rate	2x current equivalent commercial service charge
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Recycling Contamination Fee - dump as trash	per incident	\$	45.00
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Special Services (continued)

Lock Fee - Per Lock	per month	\$	5.39
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Lock Replacement Fee	each	\$	12.50
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Bin Delivery Fee	per bin	\$	55.32
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Commercial Cart Delivery Fee	per cart	\$	9.58
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Commercial Bulk Item Pick Up	for first item	\$	40.00
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	each additional	\$	15.00
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Collection from parks, playgrounds, City government buildings, and street trash cans shall be made without charge.

Contractor reserves the right to charge reasonable fees for unusual or special services.

EXHIBIT “C”

RECYCLEBANK REWARDS PROGRAM

Contractor will provide the City with the Recyclebank Rewards Program, or an equivalent rewards recycling program as part of the contract, for the duration of the contract. The reward program will help increase recycling throughout the City. Participation in this program is voluntary and available as an option for residents who prefer to participate and benefit from the rewards. The rewards program will offer economic rewards to incentivize resident’s participation in recycling by means of local discounts, coupons and incentives. Residents will earn rewards points for their recycling efforts. Residents can then redeem their points for discounts and deals at hundreds of businesses that are Recyclebank Rewards Partners.

Exhibit B - Rates

City of Santee

Proposed Rates, Effective Rates July 1st, 2019

Curbside Collection

Standard Single Family Automated Cart Service

Trash Gallon	Green Gallon	Recy Gallon	New Rate @ 7.1.19	
64	64	64	\$ 21.58	per month
38	64	64	\$ 21.58	per month
38	64	96	\$ 21.58	per month
64	64	96	\$ 21.58	per month
96	64	64	\$ 32.76	per month
96	64	96	\$ 32.76	per month

Mobile Home/Senior Service

38	64	NA	\$ 15.18	per month
38	64	64	\$ 15.18	per month
64/96			\$ 20.69	per month

Additional Refuse Cart

\$ 12.18 per month

One additional Green Waste and/or Recycling cart will be free of charge, after each additional one will be a charged.

Commercial Recycling Cart Service

Cart (36,64 or 96 gallons)

One pick-up per week	\$ 16.58	per month
Two pick-up per week	\$ 29.70	per month
Three pick-up per week	\$ 42.82	per month
Four pick-up per week	\$ 55.93	per month
Five pick-up per week	\$ 69.05	per month

Commercial Bin Service

1.5 cubic yard container

One pick-up per week	\$ 83.20	per month
Each additional weekly pick-up	\$ 65.73	per month

2 cubic yard container

One pick-up per week	\$ 96.32	per month
Each additional weekly pick-up	\$ 69.85	per month

3 cubic yard container

One pick-up per week	\$ 110.73	per month
Two pick-up per week	\$ 190.66	per month
Three pick-up per week	\$ 268.80	per month
Four pick-up per week	\$ 357.71	per month
Five pick-up per week	\$ 446.59	per month

Six pick-up per week	\$	535.50	per month
Seven pick-up per week	\$	624.39	per month
4 cubic yard container			
One pick-up per week	\$	127.83	per month
Two pick-up per week	\$	237.65	per month
Three pick-up per week	\$	347.49	per month
Four pick-up per week	\$	457.30	per month
Five pick-up per week	\$	567.14	per month
Six pick-up per week	\$	676.95	per month
Seven pick-up per week	\$	786.79	per month
5 cubic yard container			
One pick-up per week	\$	135.81	per month
Two pick-up per week	\$	252.51	per month
Three pick-up per week	\$	369.20	per month
Four pick-up per week	\$	485.89	per month
Five pick-up per week	\$	602.56	per month
Six pick-up per week	\$	719.27	per month
Seven pick-up per week	\$	835.95	per month
6 cubic yard container			
One pick-up per week	\$	147.70	per month
Two pick-up per week	\$	274.61	per month
Three pick-up per week	\$	401.50	per month
Four pick-up per week	\$	528.40	per month
Five pick-up per week	\$	655.31	per month
Six pick-up per week	\$	782.21	per month
Seven pick-up per week	\$	909.11	per month
3 cubic yard Temporary Bin			
Delivery, Removal & up to 7 days rental	\$	125.56	per bin
Each additional pick-up	\$	59.45	each

Recycling Bin Service

1.5 or 2 cubic yard container			
One pick-up per week	\$	43.97	per month
Two pick-up per week	\$	78.76	per month
Three pick-up per week	\$	113.54	per month
Four pick-up per week	\$	148.32	per month
Five pick-up per week	\$	183.11	per month
Six pick-up per week	\$	217.89	per month
Seven pick-up per week	\$	252.68	per month
3 cu One pick-up per week			
Each additional weekly pick-up	\$	39.92	per month

4 cu One pick-up per week	\$	63.50	per month
Each additional weekly pick-up	\$	50.14	per month

6 cu One pick-up per week	\$	76.41	per month
Each additional weekly pick-up	\$	60.37	per month

Cart One pick-up per week			
Each additional weekly pick-up			

3 cubic yard Split Bin			
One pick-up per week	\$	113.17	
Two pick-up per week	\$	199.82	
Three pick-up per week	\$	288.07	
Four pick-up per week	\$	376.32	
Five pick-up per week	\$	464.57	

Rolloff Service

Transfer bodies billed hauling fee plus disposal fee per ton*			
10 cubic yard - hauling fee*	\$	300.77	per haul
20 cubic yard - hauling fee*	\$	210.56	per haul
30 cubic yard - hauling fee*	\$	220.56	per haul
40 cubic yard - hauling fee*	\$	230.59	per haul

* Plus 10% landfill surcharge to offset administrative costs

Rental - each transfer body	\$	6.13	per day
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Special Services

Special Pick-Up up to 3 cubic yards	\$	59.45	each
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Additional Standby and Loading Time	\$	71.55	per hour
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(Special pick-up assumes 15 minute loading and standby time by contractor.

Additional standby and loading time shall be billed at the rate of \$63.41 per hour, pro-rated to the nearest 15 minute increment.)

Restart Fee- The fee for Restarting commercial service when a permanent account has been terminated for non payment.	\$	22.37	per occurrence
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Commercial Return to Service Fee- The return to service fee for two or more calls in a one-month period by a bin customer to return to provide service.	\$	72.39	per occurrence
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Residential Return to Service Fee- The return to service fee for two or more calls in a one-month period by a residential customer to	\$	36.85	per occurrence
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return to provide service.

Copy Fee- The charge for copies requested by customers.	\$	1.32	per occurrence
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Bin exchange/steam clean fee - allowed 2 per year. After second exchange within one year, there will be a charge per exchange.	\$	72.39	per occurrence
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Bin paint charge fee - allowed 1 per year. After first paint within one year, there will be a charge per paint request.	\$	114.48	per occurrence
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Interest Charge-Contractor may charge 1.5% interest per month on any delinquent account for such time as the bill remains unpaid after its due date.			lbs per unit
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Late Fee - There will be a minimum fee on any delinquent account	\$	3.95	per occurrence
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Single Family customers shall be charged for bulky item pick up exceeding 12 bulky item pickups in a calendar year (6 items per pickup, 2 times per year max).	\$	46.06	per occurrence
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Bins that are overloaded can be charged a fee as long as supported by evidence	\$	68.16	per occurrence
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A Bin that needs to be moved:

5 to 30 feet	\$	4.48	per occurrence
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31 to 50 feet	\$	6.06	per occurrence
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Additional 25 feet increments	\$	6.06	per occurrence
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Commercial Compaction Rate	2x current equivalent commercial service charge		
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Recycling Contamination Fee - dump as trash	per incident	\$	50.35 per occurrence
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Special Services (continued)

Lock Fee - Per Lock	per month	\$	6.03 per occurrence
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Lock Replacement Fee	each	\$	13.98 per occurrence
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Bin Delivery Fee	per bin	\$	61.88 per occurrence
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Commercial Cart Delivery Fee	per cart	\$	10.72 per occurrence
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Commercial Bulk Item Pick Up	for first item	\$	44.74 per occurrence
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each additional	\$	16.78	per occurrence
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Collection from parks, playgrounds, City government buildings, and street trash cans shall be made without charge.

Contractor reserves the right to charge reasonable fees for unusual or special services.

SIDE LETTER AGREEMENT
TO BOTH THE FIRST AMENDMENT TO AMENDED AND RESTATED EXCLUSIVE FRANCHISE AGREEMENT
FOR SOLID WASTE MANAGEMENT SERVICES AND THE EXCLUSIVE FRANCHISE AGREEMENT FOR SOLID
WASTE MANAGEMENT SERVICES

This Side Letter Agreement (the "**Letter Agreement**") to both the First Amendment to Amended and Restated Exclusive Franchise Agreement for Solid Waste Management Services (the "**First Amendment**") and the Exclusive Franchise Agreement for Solid Waste Management Services (the "**Franchise Agreement**"), both dated as of December 19, 2012, is executed and dated for reference as of April 12, 2013, by and between the City of Santee, a California municipal corporation and charter city (the "**City**"), and USA Waste of California, Inc., a Delaware corporation, a Waste Management company (the "**Contractor**").

In response to the City's Request for Proposals for Solid Waste Management Services dated February 29, 2012, Contractor submitted a proposal dated April 9, 2012 which included Key Proposal Items and Additional Key Proposer Terms (the "**Proposal**").

The City relied upon the language contained in the Proposal, including that in regards to the Recycling Initiative Fee, in awarding a new franchise agreement to the Contractor. The specific language relating to the Recycling Initiative Fee that was included in the Proposal is as follows.

"A \$5.00 per ton Recycling Initiative Fee that generates additional annual revenue for the City of Santee for all recycling tonnage, and more than offsets diminishing Landfill Host Fees while promoting positive diversion and clean air results. This Fee is proposed to go into effect immediately and include 2012 tonnage, and is expected to generate an additional \$350,000 in revenue for the city over the course of an eight-year contract."

However, the language contained in both the First Amendment and Franchise Agreement in regards to the Recycling Initiative Fee is not consistent with the language included in the Proposal. Section 3.7 of the First Amendment provides:

"Recycling Initiative Fee. In order to offset the financial impact to City of reductions in landfill host fee revenue caused by successful efforts to recycle and otherwise divert waste from landfills, Contractor shall pay to City Five Dollars (\$5) for each ton of Recyclables collected by Contractor in 2012 in excess of the aggregate Recyclables tonnage collected in 2011. Said payment shall be made on or before January 31, 2013, along with supporting documentation."

Furthermore, Section 3.7 of the Franchise Agreement provides:

"Recycling Initiative Fee. In order to offset the financial impact to City of reductions in landfill host fee revenue caused by successful efforts to recycle and otherwise divert waste from landfills, Contractor shall pay to City the sum of Five Dollars (\$5) per ton of Recyclables generated in Santee above the aggregate Recyclables tonnage generated in the previous year. Each year during the term of this Agreement this payment shall be made within twenty (20) days of the end of the calendar year based upon the previous year's tonnage. This obligation shall remain in effect for the Recyclables tonnage generated during the final year of this

Agreement, notwithstanding that the payment will be due following the expiration of this Agreement."

On or about 01/22/13 Contractor paid the City \$ 245.00 pursuant to Section 3 of the First Amendment.

It is the intent of both parties that the language included in the Proposal relating to the Recycling Initiative Fee shall be in full force and effect, and that Section 3 of the First Amendment and Section 3.7 of the Franchise Agreement be so modified.

Therefore, the parties to this Side Letter agree as follows:

1. Section 3 of the First Amendment is hereby amended to read as follows:

3.5 Recycling Initiative Fee. In order to offset the financial impact to City of reductions in landfill host fee revenue caused by successful efforts to recycle and otherwise divert waste from landfills, Contractor shall pay to City Five Dollars (\$5) for each ton of Recyclables collected in Santee by Contractor in 2012. Said payment shall be made on or before May 15, 2013, and shall be submitted with supporting documentation.

2. Section 3.7 of the Franchise Agreement is hereby amended to read as follows:

3.7 Recycling Initiative Fee. In order to offset the financial impact to City of reductions in landfill host fee revenue caused by successful efforts to recycle and otherwise divert waste from landfills, Contractor shall pay to City Five Dollars (\$5) for each ton of Recyclables collected in Santee by Contractor. The Recycling Initiative Fee shall be paid quarterly within twenty (20) days of the end of each quarter of Contractor's fiscal year and shall be submitted with supporting documentation. This obligation shall remain in effect for the recycling tonnage generated during the final quarter of this Agreement, notwithstanding that the payment will be due following the expiration of this Agreement.

City and Contractor have signed this Letter Agreement as of the dates reflected below.

City:

CITY OF SANTEE, a California municipal corporation

By: _____

Keith Till
City Manager

Contractor:

USA WASTE OF CALIFORNIA, INC., a Delaware corporation

By: _____

Doug Corcoran
Vice President